

NO. 66659-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JERRY L. RAMSEUR,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 SEP 12 PM 2:01

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The elements of robbery are defined by statute. The WPIC jury instructions for robbery mirror the statutory language. Should this Court reject the notion that when the WPIC robbery jury instructions are read to a jury they take on a different meaning than the statute?

2. Is there sufficient evidence for a rational trier of fact to have found the defendant guilty of robbery in the second degree?

B. STATEMENT OF THE CASE

1. SUMMARY OF ARGUMENT

The defendant was convicted of second-degree robbery. The language of the robbery statute has been interpreted to mean that a person commits the crime of robbery if the person either forcibly acquires the property from the owner or in the presence of another, or by acquiring the property in the absence of the owner or another and uses force to retain possession of the property. The language of the WPIC jury instructions mirrors the language of the statute. In a novel argument, the defendant claims that the language of the statute has two different meanings, one when the language is read to a jury, and a different meaning when the

language is interpreted by the courts. The defendant asserts that when read to the jury, the scope of the statute is narrowed. It is under this more narrow interpretation of the statute, that the defendant claims there was insufficient evidence for any rational jury to have convicted him of robbery.

2. PROCEDURAL FACTS

The defendant was charged with one count of robbery in the second degree. CP 1-3. A jury found the defendant guilty as charged. CP 44. With a number of prior felony convictions, the defendant's offender score was a four. CP 50, 55. The court imposed a sentence of 15 months confinement, a sentence at the low end of the standard range. CP 50, 52.

3. SUBSTANTIVE FACTS

On April 24, 2010, Jennifer Turol was working as a loss prevention officer at the Safeway store on Rainier Avenue. 3RP¹ 23-24, 32, 59. She was employed by Phoenix Protective Corporation under a contract with Safeway. 3RP 59, 122. She was

¹ The verbatim report of proceedings is cited as follows: 1RP--10/11/10, 2RP--10/20/10, 3RP--10/25/10, 4RP--10/26/10, and 5RP--1/21/11.

dressed in full uniform--with badge; an outfit in which she testified she is regularly mistaken as a police officer. 3RP 24.

On this particular evening, the defendant, who was wearing a zippered hoodie underneath a denim jacket, caught her attention as he was acting in an unusually hesitant manner. 3RP 34. Turol walked down an aisle past the defendant and observed that he had a package of steaks, a can of apple juice, and a third item she could not recall in his basket. 3RP 35. Turol rounded the corner of the aisle, stood for a second, and then came back around the corner into the aisle. 3RP 35-36. The defendant had now turned and was walking up the aisle, away from Turol, and towards the front of the store. 3RP 36. Turol then watched as the defendant took the package of steaks and stuffed it inside his jacket. 3RP 36. Turol estimated that she was 10 to 20 feet behind the defendant at this point. 3RP 90-91.

After stuffing the steaks inside his jacket, the defendant discarded the basket he had been carrying, leaving the other items inside. 3RP 98. He then exited the store making no attempt to pay for the steaks. 3RP 37.

Turol confronted the defendant outside the store, asking him if he would come back into the store and show her what he had

done with the steaks. 3RP 37. Turol's intent was to obtain the steaks and let the defendant go. 3RP 38, 41. The defendant complied with Turol's request to reenter the store. 3RP 37. The defendant then began looking around as if he was searching for something. 3RP 37. Turol told the defendant that she knew he had the steaks on him. 3RP 37. At this point, the defendant turned to leave the store again. 3RP 38.

As the defendant exited the store, Turol told him that he needed to stop and that she was going to call the police. 3RP 38. Turol stepped in front of the defendant three or four times, but he would not stop. 3RP 38. Finally, Turol reached inside the defendant's jacket and grabbed a hold of the steaks. 3RP 41, 105.

The defendant then firmly grabbed Turol's wrist and a struggle ensued. 3RP 41. Yelling "store security, stop resisting," Turol was able to get the defendant into a headlock. 3RP 43. When the defendant promised to stop resisting, Turol let him go, only to have him strike her violently in the stomach. 3RP 43, 111. The hard blow provided the defendant with the opportunity to escape--with the steaks. 3RP 43, 48.

During the struggle with Turol, some papers fell from the defendant's jacket--including a paper with the defendant's name on

it. 3RP 48-49. Detectives created a photo montage and showed it to Turol. She positively identified the defendant in a photo montage and in court. 3RP 54-55.

The defendant testified that he went into the store to buy a single item--a bottle of ranch dressing. 3RP 167-70. He said that he obtained this single item and put it in his basket--although he did not explain why he had a basket for a single item. 3RP 169-70. However, instead of purchasing the item, the defendant said that he suddenly remembered that he had another appointment so he discarded the basket and headed for the exit. 3RP 172, 181. According to the defendant, he was then confronted by a lady; a person that he had no idea was a store security officer. 3RP 172, 189, 192.

This woman asked him about some steaks. 3RP 172. The defendant responded, "what steaks?" 3RP 173. The defendant then found his discarded basket in order to show the lady that it contained nothing more than a bottle of ranch dressing. 3RP 173. Nonetheless, the woman pulled out a pair of handcuffs and grabbed the defendant. 3RP 174. The defendant claims a scuffle ensued both inside and outside the store. 3RP 177. The defendant, who admitted on cross-examination that he had 14 prior

theft convictions, testified that he was psychologically injured by this event and that he wanted to press charges against Turol. 3RP 176, 179. He asserted that he never struck Turol and that he walked away because she ended up "on her butt again." 3RP 178, 193. He professed that he did not take any steaks. 3RP 171.

Additional facts are included in the sections they pertain.

C. ARGUMENT

THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT FOR ANY RATIONAL TRIER OF FACT TO HAVE FOUND THE DEFENDANT GUILTY OF ROBBERY.

The defendant argues that the evidence presented at trial was insufficient for any rational jury to have found him guilty of robbery in the second degree--even when the evidence is viewed in the light most favorable to the State as required by law. The defendant is mistaken. The evidence presented at trial amounts to a classic shoplift/robbery.

A reviewing court must affirm a conviction if, "after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). Any higher standard of review would unjustifiably, improperly, and unconstitutionally

impinge upon the jury's duty and discretion to determine an individual's guilt or innocence. Green, 94 Wn.2d at 221. A factual sufficiency review "does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt but rather only whether any rational trier of fact could be so convinced." State v. Smith, 31 Wn. App. 226, 640 P.2d 25 (1982). The reviewing court must interpret the evidence "most strongly against the defendant and in a light most favorable to the State." State v. Gerber, 28 Wn. App. 214, 217, 622 P.2d 888 (1981).

Under the statute "[a] person is guilty of robbery in the second degree if he or she commits robbery." RCW 9A.56.210. In pertinent part, under the statute a person commits robbery when:

he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

RCW 9A.56.190.

Here, the jury was provided with the following WPIC instruction defining the crime of robbery in the second degree:

A person commits the crime of robbery in the second degree when he or she unlawfully and with intent to

commit theft thereof takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of anyone. A threat to use immediate force or violence may be either expressed or implied. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which case the degree of force is immaterial.

CP 34; WPIC 37.50. No alterations were made to the WPIC instruction provided except for deleting optional language not applicable to the defendant's case.

The jury was also provided with the following WPIC "to convict" instruction providing the elements of the crime the jury needed to find beyond a reasonable doubt:

To convict the defendant of the crime of robbery in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 24th day of April, 2010, the defendant unlawfully took personal property from the person or in the presence of another;
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against that person's will by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

(4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; and

(5) That any of these acts occurred in the State of Washington.

CP 35; WPIC 37.04. No alterations were made to the WPIC instruction provided except for deleting optional language not applicable to the defendant's case.

The Supreme Court has interpreted the robbery statute to encompass the following acts:

a taking can be accomplished either by forcibly acquiring the property from the owner's person or in his presence or by acquiring possession of property in the owner's absence and using force, violence, or threats to retain possession.

State v. Handburgh, 119 Wn.2d 284, 288, 830 P.2d 641 (1992).

In Handburgh, the defendant took the victim's bicycle peaceably outside of her presence. When the victim tried to get her bicycle back, the defendant threw rocks at her and struck her in the face in order to retain possession of the bike. Handburgh, like the defendant here, argued his actions did not constitute robbery because the taking was peaceable and the force was used later. The Court rejected Handburgh's claim that his actions did not constitute a robbery. The Court explained that the taking continues

until such time as the defendant escapes and that its decision was based on the language of the statute:

The ***plain language*** of the robbery statute says the force used may be either to obtain or retain possession of the property. We hold the force necessary to support a robbery conviction need not be used in the initial acquisition of the property. Rather, the retention, via force against the property owner, of property initially taken peaceably or outside the presence of the property owner, is robbery.

Handburgh, 119 Wn.2d at 293 (and at 291, calling this a "reasonable construction"); see also State v. Manchester, 57 Wn. App. 765, 769, 790 P.2d 217 (a contrary interpretation of the statute "ignores the plain language of the statute"), rev. denied, 115 Wn.2d 1019 (1990).

Manchester was convicted of two counts of robbery. In one instance, a store employee watched as Manchester took some cigarettes and exited the store. He was confronted outside the store, escorted back inside, at which time Manchester pulled a knife and escaped with the cigarettes. In another instance, a store employee watched Manchester from approximately 15 to 18 feet as he put some cigarettes inside his jacket and exited the store. He was confronted outside the store at which time Manchester pulled

out an ice pick and ran away. In both cases, this Court ruled Manchester's actions constituted robbery.

Here, the defendant committed a robbery just as the Supreme Court has said the language of the statute supports. Still, the defendant claims that the jury instructions provided here, WPIC instructions that mirror the statutory language, narrow the definition of robbery. This argument cannot be supported.

The defendant claims that the jurors "were not made aware of the history of the robbery statute or legislative intent." Def. br. at 10. This is absolutely true. However, statutes do not draw their meaning from legislative intent or the history of a statute if the language of the statute does not support the court's interpretation.

Unless there is a showing of ambiguity, a court "derive[s] the statute's meaning from its language alone." State v. Azpitarte, 140 Wn.2d 138, 142, 995 P.2d 31 (2000). This is true even if there is a strong statement of legislative intent that would conflict with the plain language of the statute, or, even if the plain language of the statute would yield an unlikely, strange or absurd result. Azpitarte, 140 Wn.2d at 141.

Similarly, jury instructions are read in a straightforward, commonsense manner. State v. Pittman, 134 Wn. App. 376, 383,

166 P.3d 720 (2006), abrogated on other grounds by State v. Grier, 171 Wn.2d 17, 246 P.3d 1260 (2011). A court will not assume a strained reading of an instruction. State v. Moultrie, 143 Wn. App. 387, 394, 177 P.3d 776, rev. denied, 164 Wn.2d 1035 (2008). Rather, instructions are sufficient if they are readily understood and not misleading to the ordinary mind. State v. Meneses, 169 Wn.2d 586, 592, 238 P.3d 495 (2010). A jury is presumed to follow the court's instructions. State v. Swan, 114 Wn.2d 613, 661-62, 790 P.2d 610 (1990).

In addition, instructions are viewed as a whole. State v. Bennett, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). Jury instructions are proper if they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the applicable law. State v. Willis, 153 Wn.2d 366, 370, 103 P.3d 1213 (2005).

The WPIC jury instructions here, instructions that mirror the statutory language, read as a whole and in a commonsense manner, did not take on a different meaning than the statute. Finally, even if the court were to accept the defendant's claim that the instructions somehow narrowed the scope of the statute, his claim still fails as even under his limitations, all elements of the

crime were met. The "unlawful taking" occurred when the defendant exited the store without paying for the steaks and he used force to take and retain the steaks. In short, the defendant's argument that there was insufficient evidence for any rational jury to have convicted him of robbery is without merit.

D. CONCLUSION

For the reasons cited above, this Court should affirm the defendant's conviction.

DATED this 9 day of September, 2011.

Respectfully submitted,

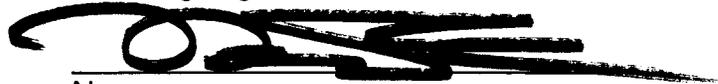
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. RAMSEUR, Cause No. 66659-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

09-12-11
Date